

Study

Of the Rules of Contact between Muslims and Non-Muslims in Time of War presented to the Conference

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The Rules of Contact between Muslims and Others in Time of War

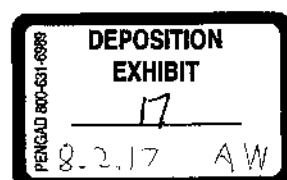
This study is divided into two chapters, introduction, and a conclusion.

In the first study, I set forth the basis for the relationship between Muslims and others in general.

In the second study, I present the rules for this contact in time of war.

Introduction: The Call of Islam to Peace:

When the Prophet (PBUH) sent his call for all of the people in Mecca to join Islam, those who believed in those who did not, did not. This is a natural human right. Freedom of belief and practicing religious rights are not hostile acts directed against anyone, and are not in and of themselves harmful to the interests of legitimate society. There is no hostility therein to the freedoms, rights, and dignity of others.



In the beginning of the call, the relationship between Muslims and others was secure, peaceful, and integrated. Social, family, and economic relationships continued. Muslims did not wage war against anyone who refused to call. It was the rejecters of the call who stood in hostile opposition from the very first day, as told to us by the books on the prophet's life [Sirra] regarding the oppression, assaults, expulsions, and torture perpetrated by the polytheists against the believers.

They considered belief in Allah to be a hostile act and threatened the community. The Koran describes the polytheists of Mecca as being: If someone mentions Allah, they are disgusted in their hearts. If someone mentions anyone else, they take it as a good omen. They practically assault anyone who recites a verse from Allah, they laugh at believers and signal each other with their eyes as they pass by. Islam continually endeavored to reach peace and safety with the enemies allied against it. The greeting in the Islam is "peace." The Almighty states: "and do not say to one who gives you [a greeting of] peace "You are not a believer," aspiring for the goods of worldly life; for with Allah are many acquisitions. You [yourselves] were like that before; then Allah conferred His favor upon you, so investigate. Indeed Allah is ever, with what you do, Acquainted. (an-Nisa 93) [Verse 94 in the Sahih International version]

Bukhari relates from Ibn Abbas: "A man from Beni Salim, who despised the followers of the Prophet (PBUH), came driving his sheep and saluted them. They said: He is only saluting us as a means of protection against us, so they attacked and killed him and brought his sheep to the Prophet, who stated the verse: do not say to one who gives you [a greeting of] peace "You are not a believer . . ." He forbade them from killing anyone who gives a salute. This a guide to entry into the religion, before confirmation, because confirmation is a religious obligation. This shows the urgency within Islam towards peace, preserving life, and suppressing bloodshed.

Christianity called on its followers to pursue peace and ordered them to forebear and forgive enemies. The Messiah said: "But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also."

He also said: "Put your sword back in its place, for all who draw the sword will die by the sword," (Gospel of Matthew, referenced in the Spirit of the Islamic Religion 331, See Peace and War, p. 124). However, followers of Christianity have pursued and still pursue a call for war and not peace. The Crusades and the colonial wars are the most damning testimony that the followers of Christianity have left its teachings.

The Jews refer to their psalms: If your Lord brings you into the land to possess and utterly destroys the people before you, kill them until you annihilate everyone. Make no treaty with them, and have no compassion for them." (Spirit of the Islamic Religion, p. 331, references in Peace and War 124). This is a clear example of a war of annihilation in its fullest meaning as perpetrated by the Jews. There is no difference between those who carry arms and those who sue for peace, between men, women, young, old, strong, weak, fighter, or captive.

It is clear that this action is without warning or declaration of war, without acceptance of treaty or reconciliation. They didn't even allow them to embrace Judaism. Nothing could protect them from death and utter destruction, and they weren't allowed to decamp and leave their nation.

Islam, on the other hand, announced from the very first day its principal of just humanitarianism, in the holy verse: "And if they incline to peace, then incline to it [also] and rely upon Allah." He also states: "Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors." Regarding those with whom a treaty is made: "So as long as they are upright toward you, be upright toward them." Regarding aggressors: "But if they cease, then there is to be no aggression except against the oppressors." It states: "Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allah is competent to give them victory. [They are] those who have been evicted from their homes without right - only because they say, "Our Lord is Allah."

He commanded adherence to treaties: "So as long as they are upright toward you, be upright toward them. Indeed, Allah loves the righteous [who fear Him]." It states: "except for those with whom you made a treaty at al-Masjid al-Haram? So as long as they are upright toward you, be upright toward them. Indeed, Allah loves the righteous [who fear Him]. It states: "But those who believed and did not emigrate - for you there is no guardianship of them until they emigrate. And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty." It states: "If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allah does not like traitors."

The Prophet of Islam and his followers orders the army not to fight against non-combatants, such as the elderly, youths, women, and those in shock, to not cut down trees or destroy buildings, and to not slaughter and butcher sheep. They were called to reform, not corrupt, even in time of war against those who committed the most hideous of crimes, injustices, torture, and oppression. Praise be to Allah, who states: " And We have not sent you, [O Muhammad], except as a mercy to the worlds."

Chapter One

The Basis for the Relationship Between Muslims and Others

In this chapter, I will specify the basis for the relationship between Muslims and others in general. I will then show the effect of the outbreak of war on this relationship, and the limits of this effect.

The First Study

The Basis for the Relationship Generally

Some of the interpreters and commentators on the hadith and fiqh [jurisprudence], both ancient and modern, see the relationship between Muslims and others as being a state of war. My opinion is to adhere to some recent writings on the international relationships in Islam.

This opinion holds that jihad is an obligation that remains in effect until the day of judgment. Muslims must engage in jihad for the sake of Allah until the word of Allah is supreme and the word of the unbelievers is subservient. This occurs according to the capabilities of the Islamic State, since one is assigned according to their capability and according to its higher interest, according to those in authority. This means that the Islamic State needs no legal justification to wage war above that which serves its interest, within its capabilities. The principle does not require evidence to justify war. From another view, according to this opinion, we don't have to study this relationship in time of war, we just need to adhere to the rules and restrictions placed by Islamic sharia for war.

This party references the following verses from the Quran: verse 5 from Surat al-Taubah, verse 19 from Surat al-Baqara, verse 4 from Surat Muhammad, and verse 28 from Surat [illegible], and from the spoken and practical Sunna, (see Bukhari 9:19)

A minority of interpreters and commentators on the hadith and fiqh, ancient and modern, taking from their writings on international relations in Islam, compare the rules of international law and believe the basis for the relationship between Muslims and others is, in general, one of peace, and that war is an exception to this rule and requires evidence for justification. This means that combat is only allowed in specific and limited situations, which may not be exempted. This exception may not be manipulated or stretched beyond the principle. From another point of view, each of these situations is an authorization to wage war. This authorization must be confirmed by the presence of conditions in which the nation will declare war on its enemy.

This group references the following evidence from books and the spoken and practical Sunna:

1. The Almighty has stated: "Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors." (Verse 190 of Surat al-Baqara. This verse commands combat against those who fight you. This fighting must be for the sake of Allah, according to his plan, and not for another worldly goal or purpose. Fighting against those who do not fight is tyranny and displeasing to Allah.
2. The Almighty has spoken: "Would you not fight a people who broke their oaths and determined to expel the Messenger, and they had begun [the attack upon] you the first time?" (verse 13 of Surat al-Taubah). This verse forms the basis upon which Islamic jihad is waged. It is a response to aggression by the unbelievers in Mecca, whether by coercion, torture, expulsion, or even death against any who embraced Islam and practiced its rites. They did so even though this belief and these rites were not a danger or threat to the safety and security of the pagan community and were not hostile to the lives and property of the people living there. Allah spoke of the unbelievers in Mecca, that they: "They practically assault anyone who recites a verse. If someone mentions Allah, they are disgusted in their hearts. If someone mentions anyone else, they take it as a good omen." In what social system like this to the powerful abhor the weak? How is reciting verses cause for theft, terror and aggression against life and liberty?
3. The Almighty has spoken: "Permission [to fight] has been given to those who are being fought, because they were wronged. And indeed, Allah is competent to give them victory. [They are] those who have been evicted from their homes without right - only because they say, "Our Lord is Allah."

And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned. And Allah will surely support those who support Him. Indeed, Allah is Powerful and Exalted in Might. (verse 38,41 of Surat al-Hajj)

These verses show that the Muslims were in a position of defending themselves, to remove oppression, and to repel aggression. This permission is accompanied by promises from Allah to grant them victory, because his greatness is victorious over the oppressors. They may take the land and annihilate the oppressors. These verses also show that war is necessary to preserve freedom of religion and to maintain sites of worship against those who care not for the sanctity of these holy sites and the freedom of religion.

4. The Almighty has spoken: "And if it were not for Allah checking [some] people by means of others, the earth would have been corrupted, but Allah is full of bounty (al-Haj 251) [Translator Note: citation is al-Baqara 251]. This verse shows that war is necessary to defend against oppression and repel aggression so that the world is not corrupted and human rights are destroyed.
5. The Almighty has spoken: "And do not fight them at al-Masjid al- Haram until they fight you there. And if they cease, then indeed, Allah is Forgiving and Merciful. Fight them until there is no [more] fitnah and [until] worship is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors. (al-Baqara 191). These verses make clear that the basis for the relationship between Muslims and others is peace, and that the fighting by Muslims against the polytheists at the sacred mosque was a response to their killing Muslims there. The polytheists were meted out as they gave, and their oppression was broken. Jihad then is to defend against fitnah and as a guaranty of freedom of belief, which is the most important human right. The end of hostility in this verse may be by their becoming Muslim or by a peace treaty.
6. The Almighty has spoken (al-Taubah 4): "Excepted are those with whom you made a treaty among the polytheists and then they have not been deficient toward you in anything or supported anyone against you; so complete for them their treaty until their term [has ended]. Indeed, Allah loves the righteous [who fear Him]." This verse requires the fulfilment of a treaty until the end of its term with unbelievers who keep the obligations of the treaty. The fulfilment of a treaty is an example of the righteousness of Allah and a sign of fear of his punishment.

If the principle of the relationship was war, then why must a treaty be honored, why can't it be breached, if the basis of the relationship were a state of war? The war between the Muslims and the unbelieving Quraish continued until the Treaty of al-Hudaybiya in year 6 AH. The fighting stopped and peace and security returned. According to this principle, war is a temporary exception that ends when its justification ends.

7. The Almighty has spoken: (al-Taubah 7) "except for those with whom you made a treaty at al-Masjid al-Haram? So as long as they are upright toward you, be upright toward them. Indeed, Allah loves the righteous [who fear Him]." This verse is clear evidence that the Islamic State is obligate to abide by the treaty it makes with its enemies, as long as the enemy abides by the treaty. This shows that the basis for the relationship is peace and that war is an exception to this status. When war ends by treaty, it must be honored so that security can return, since this is the basis for the relationship.

8. The Almighty has spoken: (al-Anfal 61) "And if they incline to peace, then incline to it [also] and rely upon Allah. Indeed, it is He who is the Hearing, the Knowing." This verse shows the requirement of the [illegible] to peace and to forsake war if the unbelievers are inclined to do so, even if they remain as unbelievers, since the verse does not require that the unbelievers leave their unbelief for there to be peace, only that they are prepared for peace.
9. The Almighty has spoken: (al-Nisa 90) "So if they remove themselves from you and do not fight you and offer you peace, then Allah has not made for you a cause [for fighting] against them." Peace and reconciliation. This verse is clear that there is no cause or authority for Muslims to wage war against the unbelievers if they [illegible] the Muslims and maintain a neutral position. Do not fight them, but offer peace.

Evidence for the First School:

The proponents for the first school draw on some verses and hadiths that order fighting against the unbelievers until they submit, give the poll tax, and end their allegiance to the unbelievers. These verses came generally as absolutes in all cases. They are not restricted by a specific cause or reason, such as responding to hostility or defending against harm. Their opinion is that these verses abrogate the verses that limit the goals and purposes of combat. These verses include:

1. The Almighty has spoken: (al-Taubah 6) "And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful."
2. The Almighty has spoken: (al-Taubah 30) "Fight those who do not believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture - [fight] until they give the jizyah willingly while they are humbled."
3. The Almighty has spoken: (al-Baqara 216) "Fighting has been enjoined upon you while it is hateful to you."

The proponents of this school state that these verses are general and absolute. They make no mention of reasons and justification for fighting, other than polytheism, unbelief, unbelief in the last day, not forbidding that which Allah forbids, and not following the true religion. This indicates that war is

necessary against the unbelievers until they submit and pay the jizya, if they are people of the scripture. If not, there is no alternative to becoming Muslim other than death. Any treaties do not prevent Muslims from fighting the unbelievers if they have power over them and it is in their interests.

They add that Muslims must pursue the doctrine of unification and the projection of Islam over the whole world, and this is not done by evidence, proof, pledge, judgement, and fine preaching, but by force and terror, for the honor of the goal and the nobility of the end, to spread this religion, enable sharia, reconcile the nations, and make worship proper. This includes the statement to allow hate in religion and spread Islam through the sword.

My opinion on this subject:

I have mentioned the references by the proponents of the second school, that the basis for the relationship between Muslims and others is peace and safety, and that war is an exception only justified by the need to defend against oppression and repel aggression. There is much evidence for this in the Quran and Sunna. The summation of this evidence is that an examination of the Book and the spoken and practical Sunna virtually absolutely requires that jihad be made legal by the ruling, interest, reasons, and justifications stipulated in these verses and hadiths. These all indicate that the default position for the relationship between Muslims and others is peace. This being the case, there is a need to correlate the verses and hadiths on jihad and fighting with the reasons and justification for resisting oppression and repelling aggression, either actual or expected. This was required because of the history between the polytheists and the Prophet (PBUH) in Mecca, where the polytheists drove him and his followers out, leaving their homes and possessions. They then pursued them after their migration and planned to kill him and the migrants, who were the initial supporters.

This is as follows:

The verses 38 - 41 of Surat al-Hajj state: "Allah defends . . . to Allah belongs the outcome of [all] matters" shows that Muslims were allowed to fight, after their [illegible], patience, forbearance, and [illegible] the polytheists, "for they have oppressed." Therefore, it is the right of the oppressed to stand up to the oppressors and to resist aggression, and this is not only through fighting. In the language of scholars on the principles of Islam, the authority to fight is the oppression imposed on them by the unbelievers. Opposing oppression and defending against aggression are required to maintain the international order, protect peace and security, maintain holy sites, and guarantee human rights.

The opinion of many other than myself who have written on this subject is that the basis for the relationship between Muslims and others is peace, and that war is an emergency measure when necessary to defend against oppression and repel aggression. This is done through examination of the verses and hadiths on jihad. This examination discloses categorically that Muslim combat against their enemies is not to force them to accept Islam and comply with its program, but as a response to oppression, real or expected.

The verses that allow, order, or encourage fighting must be read in the context of the permission or orders to fight justified by the need to defend against oppression, repel aggression, and prevent fitna in religion. Regarding the verses and hadith that order jihad generally and absolutely, they are very few and are prompted by the verses that put reasonable restrictions on fighting and belong to those verses, on the argument that the absolute is over the restricted and the general is over the specific. Any person can say that the principle for the relationship is war and that these verses abrogate the opposing evidence. Many researchers hold that this evidence does not abrogate, for insufficiency of evidence for abrogation, in addition to the fact that some of this evidence does not allow abrogation.

The Opinion of Scholars on the Authority for Warfare

A large number of Maliki, Hanafi, and Hanbali scholars (Fatah al-Qadir 4: 291, The Code 3;6, and Letter on Warfare by Ibn Taymiya 116) have stated that the authority to fight is for warfare, combatants, and enemies, not for unbelief. A person may not be killed merely because of unbelief. He may be killed for hostility and war against Muslims. This also means that women, elderly, children, etc. who are not fighting against Muslims may not be killed. This is derived from the holy text: "Fight those who don't believe in Allah or the last day . . . until they pay the jizya [poll tax] and are humbled." This verse shows that the point of fighting is though that the people of the scripture accept a contract of permanent nationhood with the Muslims through a treaty called a "dhimmitude contract." This grants dhimmis to be categorized as citizens in the Islamic State with imposition of what imposes.

If the purpose of the fighting were unbelief, it would be necessary to fight them until they became Muslim; no poll tax and continuation in their religion would have been acceptable.

The Sheikh of Islam by Taymiya stated: (Letter on Fighting 125)

"The Prophet killed none of the unbelievers with whom he had a truce, whether or not they were an Arab polytheist or not. The books on sirra, hadith, interpretation, jurisprudence, and raids all state this. This reoccurred during his life. He didn't initiate the killing of anyone, even if Allah ordered him to kill every unbeliever because their were starting to kill."

Doctor Wahba Ruhayli (*The Effect of War in Islam* 288) stated, quoting the glorious message of Professor Ghawam: "This confirms that fighting in Islam was to protect the call and not for aggression. There was a warning to any party hostile to the Muslims with three choices: Islam, treaty, or combat. This was prevalent in the first invasions after exhausting peaceful methods.

I believe that these three situations (Islam, jizya, and combat) are not exclusive, and are not rules of public order or authoritative. The legitimacy of the jizya was a form of in-kind transaction and an observance of custom. The Prophet and his caliphs after him concluded treaties that were not contingent on one of the three conditions, such as the mediation of al-Hudaybiya and the treaty concluded by the Prophet in Medina between al-Aws, the al-Khazraji, and the Jews. The Muslims concur that the person in charge may conclude a contract that achieves their interest. It is apparent that the basic goal of Islam is to arrive at a state of peace and stability that enables the call to Islam and grants its preachers the freedom to spread the call.

Therefore, treaties can be concluded with warring enemies without the provision to pay the jizya, if the interests of the Muslims so require."

al-Shafi'i believed that the justification for fighting was unbelief. He also allowed fighting against non-combatants, and used the following verse as general and absolute reference: "Fight the polytheists." Many responded to al-Shafi'i with copious and conclusive evident, in my opinion, that his exegesis was incorrect on this matter. The Prophet (PBUH) ruled Saad Bin Ma'ath in the Beni Quraitha. He was able to rule them without killing, even though his judgement would have been correct had he done so, since the ruling of the judge is binding.

There are compelling texts, not subject to interpretation, that refute al-Shafi'i, such as the following: "Fight in the way of Allah those who fight you but do not transgress. Indeed. Allah does not like transgressors." (al-Baqara 19) [Translator Note: al-Baqara 190] Ibn Taymiya, may Allah have mercy on him, stated: "The authorization to fight among Muslims is based on the authorization to fight among others." His student, Ibn al-Qayim, stated: " Muslims are required to fight those who fight them, but not those who do not fight them."

This defensive position in the way of the Prophet (PBUH) and the method followed by those who came after him. History tells us that one of his followers or imams may have illegally authorized the shedding of unbeliever blood. Many responded to the call to abrogate this verse: "Fight in the way of

Allah those who fight you but do not transgress” and other such verses, which confirm that fighting is for defense against oppression, repel aggression, prevent fitna in religion, and assisting the oppressors from the Muslims. The many responded that there is no evidence for abrogation or for specialization. Sheikh of Islam Ibn Taymiya stated: “The case for abrogation requires evidence. There is nothing in the Quran that contradicts this verse, but there are verses in agreement, so where is the abrogation? (Letter on Fighting 118)

From another aspect, the provisions of these verses do not allow abrogation. Forbidding oppression is not subject to abrogation, since oppression is forbidden in all sects and religions. Ibn Abbas, Omar bin Abdul Aziz, and jihadists have said that this verse is a trial. Regarding the verse: “Fight in the way of Allah those who fight against you,” Abu Talha stated: “Do not kill women, children, the elderly, or any that offer peace. Any who do so have transgressed.”

Abu Ja’afar al-Nuhas that this is the correct from the Sunna and examination (The Abrogator and the Abrogated in the Quran, by al-Nuhas 27; Interpretation by al-Qortabi 2:236; cited in the Effect of War on Islam, by Wahba Ruhayli, PhD 94).

If this and similar verses that prohibit hostility were abrogated, then coercion in religion would be permissible, but coercion in religion is prohibited by a Quranic verse that prohibits coercion: “There is no coercion in religion.” It is proven and conclusive that the Prophet (PBUH) captured some polytheists, killed some, and ransomed others. If the penalty for unbelief were death, and unbelief was an authorization for fighting, then the Prophet (PBUH) would not have taken ransom, but would have drawn the sword against every prisoner.

However, Allah the Almighty states regarding prisoners: “strike [their] necks until, when you have inflicted slaughter upon them, then secure their bonds, and either [confer] favor afterwards or ransom [them] until the war lays down its burdens. (Mohammad 4)

The Second Study **Rules of Contact in Time of War**

We concluded in the previous study that the basis for the relationship between Muslims and others is peace and not war. War is legitimized for reasons spelled out in sharia. If war is declared after these conditions and reasons manifest themselves, then the war is conducted within these limits. If the reasons and justifications cease to exist, then the war is no longer legal, because the ruling on war depends on the presence or absence of these reasons. The verses from the Quran and from the Sunna

of the Prophet that treat the reasons and justifications have been discussed, and can be summarized as follows:

First: Defend against Oppression:

Defending against oppression towards Muslims, actual or expected, is one of the conditions that allow combat. This is treated by verses 38 - 41 of Surat al-Hajj, which state: "Allah defends . . . to Allah belongs the outcome of [all] matters." These verses establish the following:

1. Muslims are authorized to engage in combat when the enemies initiate the fighting.
2. The permission to engage in combat is based on oppression against the Muslims by the polytheists, "because they oppress." This took the form of being driven from their homes for no crime other than saying that Allah is their lord. In other words, they were practicing their freedom of belief and practicing their religious rites. This is a natural right guaranteed by all positive constitutions and global declarations of human rights.
3. Jihad is necessary to preserve the balance of power, protect values, and protect the holy sites. If Allah didn't check people, some by means of others, then holy sites would be destroyed. This would be a travesty against one of the most important human rights. This is the right to practice one's religion rites in the locations specified for the performance of these rites.
4. This makes it definitive that the permission for Muslims to engage in combat is to remove oppression and stop aggression, protect human rights, allow believers to practice their religion that they choose themselves.

Two: Prevent fitna in religion and to oppose hostility with the same.

Prevention of fitna is one of the legitimate causes for combat, in addition to meeting hostility with hostility. This comes from verses 190 - 194 of Surat al-Baqara, which states: "Fight in the way of Allah those who fight against you . . . with the righteous." These verses show the following:

1. Fighting by Muslims is restricted to those who fight against them. Fighting against non-belligerents is a violation that is not pleasing to Allah.

2. The Muslims have the right to expel the unbelievers since they expelled the Muslims. When fighting at the holy mosque, if they fought them therein, this is a just punishment for the unbelievers, to treat them the same as they were treated. The initiator is worse, as the proverb goes.
3. The fitna [revolt] of believers against their religion, coercion to force them to leave it, persecuting them because of their religion all justify fighting against the unbelievers. The purpose of the fighting is to end the revolt in religion, guaranty the freedom of conviction, and secure the lives of believers. Revolt against religion is one of the strongest forms of fighting before Allah. It is taking away a right that is like the right to life, which is the freedom of religion.
4. The fighting stops when the reason to justify it stops, "cease, there is only hostility against the oppressors."
5. Retribution for harm to holy sites; whoever aggresses against a holy site will punished with the same aggression. Whoever does not aggress may not be attacked. The response to attack is through the same treatment.

These show that war is necessary but an exception to peaceful relations. The reason is always to respond to oppression, aggression, or fitna in religion. If the enemy refrains from or ceases his oppression or aggression and allows the people the freedom of conviction and to practice their rites, then they may not be fought or killed, but should be left in peace.

Three: Defense of the Weak:

Defending weak and persecuted Muslims living in countries not under Muslim authority is one of the justifiable reasons for war and combat. As the Almighty has said: (al-Nisa 75) "And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children who say, "Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?"

Four: Prevent Religious Persecution:

Religious persecution and the forfeiture of religious freedom and ability to practice religious rites is a justifiable reason for war, according to Islamic sharia. The Almighty has said: "Fight until there is no

more fitna, and religion in its entirety is for Allah.” (al-Baqara 193). This applies to Muslims living in countries not under the authority of the Islamic State.

I will now detail these reasons and justifications in the following cases:

The First Case: Elevate the Word of Allah:

The purpose of fighting is not to coerce people to join the religion. It is not for territorial expansion and capture of the resources of others, to gather booty, and it is not for influence and authority. The purpose for fighting is that the word of Allah, that is, its sharia, program, and what he has bestowed on his creation in his mercy, should be supreme and the word of unbelievers should be subservient. Islam is a global invitation as a mercy to the worlds and a gift to all people. If the glory of the religion of Allah is allowed to be preached and his message is spread so that devotion to religion can grow according to sharia and its program, then there is no justification for fighting.

This judgement may not be without cause. If Islam is spread and Muslims are allowed to preach, then there is no longer any reason for war against the people.

The Almighty has stated: “Fight them until there is no [more] fitnah and [until] worship is [acknowledged to be] for Allah. But if they cease, then there is to be no aggression except against the oppressors.” (al-Baqara 193). The Most High has stated: “And fight them until there is no fitnah and [until] the religion, all of it, is for Allah. And if they cease - then indeed, Allah is Seeing of what they do.” (al-Anfal 39) The gist is that we must fight them until they no longer seduce the believer away from his religion and torture and persecute him because of his faith. Jihad of Muslims is not for property, but for the sake of Allah. As the Almighty has said: “And fight in the cause of Allah and know that Allah is Hearing and Knowing.” (al-Baqara 244). Legitimate combat is done for the cause of Allah, so that there is no fitna and that religion in its entirety can be for Allah.

Therefore, fighting is legal to achieve this noble goal and honorable purpose. This is confirmed by words from the Prophet: I have been ordered to fight the people until they say there is no god but Allah. Those who say there is no god but Allah are protected by me for their lives and property, as is their right, and their account is with Allah (al-Bukhari 9:19).

Rabi Bin Aamr, [illegible] Bin Sha’aba, and Hathifa Bin Muhsin said, when questioned by the commander of the Persian army on why they had come to fight: " We have been sent by Allah to

remove anyone who so wishes from their worship to the worship of Allah alone, from the constraint of the world to its expanse, from the tyranny of religions to divine justice, he has sent his messenger to his creation, then from him to us, who have brought it, [illegible], and presented it. We fight so that we will either go to heaven or triumph." The purpose of jihad is not to occupy the land of others, exalt in influence, or to pillage goods; the purpose and goal is a gift to the people and their acceptance of the noble life and permanent residence in the house of Islam. Through faith, they come together as brothers in religion and citizenship. They are granted the beneficence and justice of Islam, even if they remain in unbelief.

Combat conducted outside of this purpose and legitimized by this goal is not legal. It is not done in the cause of Allah or to defend against fitna in religion, it does not enable the religion of Allah. This constricts the occasions for war.

The Prophet (PBUH) said the following: "Man fights for spoil, man fights to be remembered, and man fights for a position, but who fights in the cause of Allah? Then he said: 'whoever fights so that the word of Allah is supreme, he is fighting in the cause of Allah.'" (Sunan al-Nisa'i 6:15).

The expression of the ulema that jihad is not intended for itself but as a gift to the people. Jihad was entrusted with bringing this gift to others. Tabari mentioned when writing on holy messengers "Allah wants us to have from your bounty to have Islam." (Tabari, History of Nations 2:406). War is necessary for what it enables, and should not be resorted to unless the justifications are present. This comes after presentation of the offer to the people and giving them the right to choose to accept it or be subject to the authority of the Islamic State through a dhimmitude contract and payment of the jizya tax to enjoy full citizenship. Some are for Muslims and what is against them is against them. This is in exchange for imposition of zakat on the Muslim citizens, since it is a pillar of Islam. It is imposed on them as an obligation of the religion, as we have mentioned.

To confirm the goal of fighting, Ali Bin Abi Talib said to the Prophet (PBUH) during the raid on Khaybar: "Fight them until they become like us." The Prophet (PBUH) said: " Call them and others to Islam, this is our duty from Allah [illegible] Allah give you a good man to be for you an excellent man. (Ibn al-Qayim al-Jawziya, Zad al-Ma'ad 2/134, al-Bukhari 4:73)

The Second Case: Defense Against Aggression

The unbelievers were very hostile to the Prophet and his companion. There were numerous forms of aggression that started from the first day he began his call to Islam. They expelled him from Mecca

and expelled some of his companions to Abyssinia. They assisted in his expulsion. The Almighty has stated: "Would you not fight a people who broke their oaths and determined to expel the Messenger, and they had begun [the attack upon] you the first time?" (al-Taubah 13) Here are a number of hostile crimes: Breach of faith, breaking of treaty, scheming to drive the Messenger from his country, initiating hostilities without any Muslim action taken against them. For this reason, the Almighty said: "Drive them out as they have driven you out." Respond in kind.

From this, it is clear that the Prophet and the Muslims did not initiate hostilities against the unbelievers, but exerted their rights to freedom of conviction and practicing religious rites by reciting the verses of Allah. Allah spoke of the unbelievers, that they would feel disgust in their heart if the Muslims mentioned Allah alone. They practically assaulted anyone who recited verses. However, reciting verses is not a hostile act against anyone. A verse is not a bomb or a weapon of mass destruction, so that it would be classified as a crime, as though it were theft, terrorism, murder, or torture.

The unbeliever initiated the war against the Muslims, at a time when they were subject to the disdain of the polytheists and were patient with their abuse.

The permission to engage in combat was to confront this aggression and protect their lives, property, and homes. The Almighty has stated: "Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors." (al-Baqara 19) [al-Baqara 190]. The Almighty has stated: "And fight against the disbelievers collectively as they fight against you collectively. And know that Allah is with the righteous [who fear Him]." It is clear that this aggression was directed against the Muslims. This is confirmed by the verse: "So whoever has assaulted you, then assault him in the same way that he has assaulted you. And fear Allah and know that Allah is with those who fear Him." (al-Baqara 194) This includes all forms of direct aggression.

The unbelievers laid plans to seduce those entering Islam and to carry them back to their religion by force. They used all types of abuse, psychological torture, and physical torture. Seducing a believer from their religion is a crime of aggression against one of the most important human rights, the freedom of conviction and practice of religious rites. This is a natural right guaranteed by all positive constitutions and global declarations of human rights. This is confirmed by the holy verse: "And they will continue to fight you until they turn you back from your religion if they are able." (al-Baqara 217). The Quran mentions the scheming and intriguing against the Muslims in a number of verses, to include "And never will the Jews or the Christians approve of you until you follow their religion." The Almighty

has said: "Hatred has already appeared from their mouths, and what their breasts conceal is greater." The Almighty has said: "If they gain dominance over you, they would be to you as enemies and extend against you their hands and their tongues with evil, and they wish you would disbelieve." For this reason, Allah ordered fighting against the unbelievers to protect the freedom of conviction: "Fight them until there is no more fitna, and religion in its entirety belongs to Allah. That is, an order that religion be for Allah and not for man. Whoever wishes, may believe, and whoever wishes to disbelieve, may do so.

The phrase "religion in its entirety belongs to Allah" doesn't mean coercing the entirety of creation into joining the religion, or annihilating them if they don't accept it. The holy Quran repudiates this meaning with the verse: "There is no coercion in religion." The Almighty has said: "would you compel the people in order that they become believers?" The almighty has said: "You are not over them a controller." Seducing a believer away from his religion and forcing him from it by the sword is worse than murder. This is a violation of the right to chose one's doctrine; it is a violation of the right to life, for there is not life without religious belief.

Summary: Combat is authorized against aggression, both actual and expected, against Muslims. If there is no aggression, then combat is not justified, even if there are other reasons. If non-muslims are allowed to fight against Muslims, then jihad is the right of Muslims to defend themselves. This is a fundamental right ensured by international law and acknowledged by all sides. As stated by al-Kamal Bin al-Himam, the purpose of war is to rid the world of corruption. There is no corruption worse than threatening security and peace, depriving people of their freedoms, aggressing against lives, property, holy sites, and homelands. For this reason, the Almighty has said: " "And were it not that Allah checks the people, some by means of others, there would be corruption in the earth." The Most High has said: "And were it not that Allah checks the people, some by means of others, there would have been demolished monasteries, churches, synagogues, and mosques in which the name of Allah is much mentioned." (al-Hajj 40). This is the fitna in religion that could pull the world to annihilation.

The Third Case: Protection of the Call and the Preachers

Preaching the call is a collective duty for Muslims. Protecting the freedom to preach is a right ensured by positive constitutions and global declarations of human rights. It come under the freedom of conviction and thought and practice of religious rites. Countries and governments must allow the preaching of this message and direct it through sound methods, even if this country is not Islamic. The freedom of conviction and thought cross borders and is not an internal matter for a nation.

Communicating with another person is not an act of aggression. Whoever wants to believe may do so, and whoever wants to disbelieve may do so.

If a nation stands in the way of the call and restricts the freedom of conviction, the Islamic State may use all peaceful methods with this nation so that it will allow preaching of the call and the protection of preachers. If peaceful methods fail and the right to preach is forbidden and doors are closed to preachers, and coercion and torture are used, then the Islamic State has the right to confront this hostile position with a similar hostile position

which could lead in the end to a declaration of war. In the present age, the great nations monopolize for themselves the right to declare non-consent and express outrage at countries who deny human rights to their citizens. They wage economic warfare and veil it as aid. This is a type of war in the present age. As a result, sharia allows the Islamic State to confront any who prohibit the preaching of the call and restrict the freedom of conviction from its people. It may take a hostile stand against it that could lead to the declaration of war (if it serves the interests of the Islamic State and its economic and military circumstances). This does not violate international law or global declarations of human rights.

Delegations were sent by the Prophet (PBUH) to the leaders of surrounding nations with a letter inviting them to the new religion.

It requested entry for the preaching to their people, or at least not stand against it or those who are joining the religion or those defending it. There were different responses to these letters from the Prophet (PBUH) and their treatment of his messengers, to include the death of a representative from the Prophet (PBUH) (Tabari, History of Nations and Kings 2:133, see the Theory of War in Islam by Dhou Muftah Ghamaq, PhD 115).

The Prophet and his companions thereafter decided to engage in war with those who restricted the freedom of conviction, who stood against the preachers and tortured and terrorized him, according to the verse: "...then fight the leaders of disbelief, for indeed, there are no oaths [sacred] to them; [fight them that] they might cease." (al-Taubah 12)

Summary: Islamic sharia states that standing against the call, prohibiting the freedom of conviction, terrorism and persecution of preachers and preventing them from performing their duty to preach is a cause for declaration of war and is one of the legitimate causes for combat. This will occur if peaceful methods to convince those who practice terrorism against the call and preachers to cease these

actions and allow these preachers to spread their message legally, wisely, and in good faith, without interfering in the internal affairs of the nation in which they are preaching. Preaching the invitation to Islam is a fundamental principle of sharia, and is a custom of public order, which a Muslim nation does not attempt to skirt.

Article 18 of the Universal Declaration of Human Rights guarantees the freedom of religion with the statement: "Everyone has the right to freedom of thought, conscience and religion." All nations are asked to protect this right and allow preaching. These nations must not discriminate between their people and preachers and their media methods.

The Fourth Case: Supporting the Weak:

Sharia has determined the right and obligation of the Islamic State to assist Muslims living in a country not under the authority of the Islamic State and remove any oppression on them, protect their rights and freedoms, the most important of which is the freedom of conviction and practicing Islamic rites. If the Islamic State can't perform this obligation peacefully using civilized methods, it may have to resort to war. War may be necessary but is not inevitable in these cases.

This is indicated by the following verse: "But those who believed and did not emigrate - for you there is no guardianship of them until they emigrate. And if they seek help of you for the religion, then you must help, except against a people between yourselves and whom is a treaty. And Allah is Seeing of what you do. (al-Anfal 72). The sharia obligates Muslims to help their brothers in religion if they are exposed to temptations, abuse, or persecution in the nation in which they live, even if they do not immigrate to Muslim lands. This is after exhausting all peaceful methods with the nation that is persecuting them. The support will be according to the situation, and may be through diplomatic methods, financial support, or through men and arms, and if necessary, through fighting.

The Most High has confirmed that it is the duty of every Muslim towards his weak brothers in a country that is not under the authority of the Islamic State. The holy verse states: "And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children who say, "Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?" (al-Nisa 75) This verse obligates assistance to each Muslim living outside of the house of Islam if he is subject to persecution, injustice, or aggression. Whoever wars against Muslims and prohibits freedom of conviction and the practice of religious rites must be confronted through all peaceful and diplomatic means. If this is of no avail, then there is only combat as the only solution. The sharia has one exception in which assistance to Muslims is not obligatory; if the persecuted Muslims lives in a nation with which there is a security or non-

aggression treaty with the Islamic State. In this case, the Islamic State must take measures to convince the nation without waging war to fulfil its obligation to protect the Muslim.

The Fourth [sic] Case: Lift Oppression on Subjugated Peoples:

Islamic sharia legitimizes fighting to support the oppressed and weak, even if they are not Muslim, as long as they are tied to Muslims through security and mutual protection treaties and agreements. The Prophet (PBUH) participated in the Fadhoul Alliance before the initiation of his mission. He said: Even though I was called to Islam and accepted, this alliance was to support the oppressed and to restore rights, and take the hand of the oppressor, regardless of the doctrine of the oppressed and oppressor.

[illegible] entered into an alliance with the Messenger. The treaty between him and the Quraish stipulated that whoever want to join Muhammad's alliance could do so, and whoever wanted to enter the Quraish alliance could do so. When war broke out between Benu Bakr, allies of Quraish, and [illegible], allies of the Messenger, Quraish helped its ally and the Messenger (PBUH) helped [illegible]. Not all of them were Muslim. This war lead to the liberation of Mecca (Sirra Ibn Hisham 390 - 411) This makes sense according to the following verse: "And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children who say, "Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?"

In the interpretation of Tabari, it states: "Why don't you fight for these weak and unfortunate who call out to Allah to be taken from this oppressive city, they have no power to do so. Why don't you fight for them so that they will submit to your religion (Compendium of Statements 5:169).

The Purpose of Fighting and the End of War:

There is no doubt that the purpose of warfare is to defend against oppression, repel aggression, protect the freedom of religion, support the weak and oppressed, but when does the fighting stop, and how does the Muslim fight the unbelievers who have their own justifications for warfare, in order to defend against their oppression, stop their aggression, and prevent fitna of believers in their religion? These holy verses and sunna of the Prophet say that war ceases in one of the following manners:

1. Voluntary entry into Islam. If there is conclusive evidence that "there is no coercion in religion," and that the fighting against the unbelievers is not because of their unbelief, with the caveat that the Prophet (PBUH) forbade fighting against women, elderly, and children, even though they are all

unbelievers. The jizya is taken from the people of scripture and they are granted the right of permanent residence in the house of Islam.

2. If they accept citizenship offered to them by the Islamic State through a permanent contract called a dhimmitude contract. They must pay a tax called a “jizya,” in consideration for their subjugation to the state’s authority in which they live and benefit from its blessings and justice. They have the same rights as Muslim citizens. They have their obligations to not violate their doctrine, while the Islamic State is obligated to protect their lives, land, and possessions.

From another view, dhimmis enjoy all the features of the state that Muslims enjoy, such as external defense and internal security. When a Muslim pays zakat, he participates in these costs. This is a pillar of Islam. Whenever dhimmis are assigned this without their consent, this contravenes the freedom of conviction, which is guaranteed by Islam, so the Islamic State accepts the jizya instead of the zakat. Acceptance of citizenship through a dhimmitude contract is granted to all unbelievers, whether they are people of the book or other polytheists, even Arab pagans who worship fetishes, on the opinion that it is more probable. Abu Yusif, Malik, al-Awza’i and all the hadith scholar who have written on international relations in Islam (Hashiya al-Doushki 2:201; Muwahib al-Jalil al-Hatab 3:381; al-Kharaj of Abi Yusif 138; Neil al-Awtar 7:233, see the work *The Effect of War in Islam*, by Wahba al-Ruhayli, PhD, p. 84 and following). These have responded to evidence from the group forbidding the taking of jizya from polytheists in general, or from Arab polytheists in particular, with strong arguments.

Dr. Wahba al-Ruhayli gave greater weight to taking jizya from non-muslims general, and responded to the evidence from those in opposition, quoting Ibn al-Qayim in strengthening the confirmation of this opinion. He stated that Islam communicated its purpose regarding the polytheist Arabs and others today that can organize the relationship with them on the basis of treaties founded on sharia.

Ibn Taymiya has stated: (Letter on Fighting 125) “The Prophet killed none of the unbelievers with whom he had a truce, whether or not they were an Arab polytheist or not. The books on sirra, hadith, interpretation, jurisprudence, and raids all state this. This reoccurred during his life. He didn’t initiate the killing of anyone, even if Allah ordered him to kill every unbeliever because they were starting to kill.”

If the rule for the polytheists is the rule for all unbelievers, then the Islamic State will present the hostile nation one of three choices: Islam, treaty, or combat. The Prophet (PBUH) and his

companions made treaties in which there was no requirement for his enemies to choose between Islam, jizya, or combat, such as the mediation at al-Hudaybiya, the Medina Treaty between al-Aaws, al-Khazraj, and the Jews. Muslims have concluded that the person in authority may make treaties to achieve the interests of the Islamic Umma. This shows that the goal of Islam is to achieve security, safety, and to allow the Islamic call to be spread without impediment. These types of treaties do not require that there be a jizya contract, according to the agreement between the warring nations.

3. A settlement that serves the interests of the Islamic State. This settlement can be with both people of the book and with other polytheists, as opined by ancient and modern jurists (Wahba al-Ruhayli in *The Effect of War in Islam*, 111 - 113). They take the following verse as a reference: “Fight them until there is no fitna and religion is for Allah, then stop, for there is only hostilities towards the oppressors.” Some verses in the Quran indicated that the end occurs with the Islamization of the warring enemy, as happened in Syria, according to the verse: “But if they repent, establish prayer, and give zakah, then they are your brothers in religion.” The end may be by settlement, as referenced in many hadith. The state of war between the Messenger and the Quraish unbelievers occurred in 6 AH with the mediation at al-Hudaybiya, while they were Arab polytheists living in Mecca. There are many verses that obligate compliance with treaties signed by Muslims with enemies, without specifying that the enemies were people of the book, such as in the following verse: “Excepted are those with whom you made a treaty among the polytheists and then they have not been deficient toward you in anything or supported anyone against you; so complete for them their treaty until their term [has ended]. Indeed, Allah loves the righteous [who fear Him]. (al-Taubah 4)

Chapter 2: Observing the Rules that Govern the Relationship between Muslims and Others in Times of War

In the first chapter we explained that the foundation of the relationship between Muslims and others is peace and that war is an exception to that rule, dictated by necessity.

And whereas necessity is assessed by its significance, war is allowed in specific circumstances and for special reasons and justifications made clear by Islamic law. We mentioned, previously, the rules that govern the relationship between Muslims and others in times of war. In this chapter, I will focus on the observation of these rules and explain the rulings and principles that follow from them.

First, the ordinance of war should be issued by the ruler after consulting with the expert decision-makers. This should be after verifying that there is a condition that dictates the legislation of war or where the condition's degree of necessity justifying war is verified.

Secondly, on declaring war prior to warfare:

1. International law establishes that the state that desires to declare war must do so prior to taking military action to guard against betrayal, treason and surprise attacks.

Islamic legislation has also established this.

God, the Exalted, says: "If you [have reason to] fear from a people betrayal, throw [their treaty] back to them, [putting you] on equal terms. Indeed, Allah does not like traitors." [Al-Anfal:58]

Islamic law considers taking military action prior to the declaration of war and surprise-attacking those who are bound to a treaty with Muslims an act of betrayal and treason that God dislikes and that is punishable in the Hereafter. As such, we come to find that the foundations of Islamic international law are legal obligations protected by the creed, safe-guarded by faith, and maintained by the fear of God's punishment. The interest of Muslims doesn't justify betrayal or treason, and fear of the enemy's mobilization isn't a valid justification for breaching a treaty or treason.

God, Glorified and Exalted be He, says: "Excepted are those with whom you made a treaty among the polytheists and then they have not been deficient toward you in anything or supported anyone against you; so complete for them their treaty until their term [has ended]." [Al-Tawbah: 4] This verse makes loyalty to treaties until their term ends an obligation as long as the enemy observes the treaty without any direct or indirect breaches prior to the enemy's attack on Muslims.

Islam, thus, protected those who were bound by treaties and pacts with Muslims from treason and betrayal until the termination of these treaties and covenants. This is among the most significant rules governing the relationship between Muslims and their enemies in times of war. War should not be declared on a state that is bound by a treaty with Muslims as long as this state is loyal to the treaty and doesn't commit any act that would breach it. And even in the case where Muslims find acceptable reasons and sufficient evidence for breaching a treaty, they are obliged to declare or inform the enemy of their point of view, that is, breaching for a reason that necessitates it. And treaties are made following war, so breaching a treaty would be going back to war.

2. International law considers combatants as the regular armed forces and army reserves. But regular civilians are not combatants and should not be confronted and warfare should not be directed towards them. Islamic legislation had established this 14 centuries ago, stipulating that war operations should not be directed to those other than the combatants. Killing of children, women, elders, handicapped, worshippers, and others who are not able to fight or participate in war is forbidden.

International law forbids killing the wounded and torturing, mutilating or assassinating the enemy and prohibits the use of weapons that are used to torture the enemy as it forbids the poisoning of wells, water, and food, and the mutilation of dead bodies.

Islamic law has also prohibited all of the above and especially general torture like water boarding, burning, and destroying. It also forbids the killing of an enemy by targeting the chest and mutilation.

International law established the good treatment of prisoners and prohibited infliction of harm on them. It is forbidden to kill, injure, or mistreat or confiscate them.

On this, Islamic law has provided the best examples. The following are details of these regulations:

The Prophet Muhammad, peace and blessings of God be upon him, said: "Go in Allah's name, trusting in Allah, and adhering to the religion of Allah's Apostle. Do not kill a decrepit old man, or a young infant, or a child, or a woman; do not be dishonest about booty, but collect your spoils, do right and act well, for Allah loves those who do well." (Translation link: <https://sunnah.com/abudawud/15/138>)

This ordinance stipulates that *jihad* (or armed struggle) should not be engaged in for any worldly purpose like combatants and conquerors used to do before Islam and even after the advent of Islam to this day. It was, no doubt, a precedent in legislation and methodology that differed from that which the world had been observing prior to it. This was the first world declaration to protect the entire humanity which is that warfare should not target those who are not combatants, despite its necessity to fend off invasion and oppression, protect human rights, defend the oppressed and stand up for the persecuted and those being subject to torture among the men, women, and children who are unable to defend themselves and unable to escape the injustice and oppression.

Based on this:

1. It is permissible to kill those of the disbelievers who violate the freedoms of belief, thought, and choice, through the force of weapons whereas the use of reason necessitates a response of proof, evidence, logic, wisdom and giving good advice. In general the polytheists and disbelievers used to make it difficult for Muslims even to recite the Quran. God says: "They are almost on the verge of assaulting those who recite to them Our verses." [Al-Haj:72] Even though reciting the Quran was neither a violent act nor an insult to anyone, it drew assault or terrorism. God, the Exalted, said: "And when Allah is mentioned alone, the hearts of those who do not believe in the Hereafter shrink with aversion, but when those [worshipped] other than Him are mentioned, immediately they rejoice." [Az-Zumar: 45] They expressed their aversion in the form of satire, mockery, injustice, and oppression. Imagine a people who live in a society where the strong treat the weak with mockery and hate and inflict the worst forms of punishment upon them because of their belief. As God, the Exalted, said: "And they resented them not except because they believed in

Allah, the Exalted in Might, the Praiseworthy.” [Al-Buruj: 8]. And He said: “[They are] those who have been evicted from their homes without right - only because they say, “Our Lord is Allah.”” [Al-Haj: 40] What should the relationship between Muslims and such people be like? And is this a social and political system that should be protected or rather be changed for the interest of humanity and the protection of natural legitimate human rights. Why should those reciting the verses of God be subject to assault, terrorism, horror, bloodshed and confiscation of liberties when it is a natural right that the society as a whole should maintain and protect rather than destroy those who uphold it.

2. The basis for fighting disbelievers is not their disbelief but rather their assault and war against Muslims. Hence, killing those who are unable to fight among the disbelievers such as the young children, infants, women, elderly and the handicapped is prohibited, since they don’t qualify as targets in warfare. Because the basis is not disbelief nor is it to force the disbeliever to accept Islam or practice its rituals as derived from the Quran and *Sunnah* (sayings and actions of the Prophet Muhammad) and general status quo of Islamic countries who repeatedly make it clear that although *jihad* (armed struggle) is for the purpose of upholding the word of God to prevent tribulations on earth and for the world to live according to God, it is not to force Islam’s opponents to accept it through compulsion or use of force. And it is not to occupy land nor take advantage of its wealth for the *Zakah* (alms-giving) is gathered from the rich and distributed to the poor. And it is not for collecting spoils nor for gaining power or authority. The Prophet Muhammad, peace and blessings of God be upon him, was offered to be king, but he refused and was offered to be given money so that he would be the richest Arab in terms of wealth, but he refused. And he said his famous saying, “Even if they place the sun in my right-hand, and the moon in my left-hand in return for giving up this matter (Dawah to Islam), I will never stop – until; - either Allah makes it (the religion of Allah) triumph or I die defending it.” [As-Seerah an-Nabaweyyah, Ibn Hisham (vol.1, p.265-266)]
3. It is not permissible to kill those other than combatants in war such as young children, the mentally ill, a dying elderly who has no say in the war and doesn’t assist in it with his expertise or experience, and the peaceful woman who is not actively participating in the war nor assuming any effective roles in the war such as espionage or operating military vehicles. The evidence of forbidding the killing of women, elderly, young children, the mentally ill and others can be found in God’s saying: “Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors.” [Al-Baqarah: 190] And they (those mentioned above) don’t kill or assist in killing, hence their killing would be a transgression. And it is ungraceful, and in fact, corruptive for there is no greater corruption than killing a soul without any purpose. And there are many sayings of the Prophet on that matter.
4. The Prophet Muhammad, peace and blessings of God be upon him emphasized the graveness of killing women saying: “This is not one with whom fighting should have taken place...Tell Khalid not to kill *zhuriyya* or a *aseefan*.” (translation link: <https://sunnah.com/abudawud/15/193>).

Zhuriyyah refers to young children and the *'aseef* is a person hired by the enemy to kill Muslims. The author of *Al-Sayr Al-Kabeer* (3:182): "And because disbelief, although it is among the gravest crimes, is between God's servant and his Lord, the compensation for this crime is postponed to the Hereafter. However, that which is done in the world, it is legitimate for the benefit it brings to God's servants, such as fending off the catastrophe of war. God says: "Fight in the way of Allah those who fight you." It is not valid for those who do not fight but if anyone of them fights, then there is no prohibition in fighting them because they assumed the role upon which fighting was made obligatory, and that is their fighting us.

Also, among the *hadiths* (Prophet's sayings) was one "narrated by Nafi' that Abdullah Ibn Umar informed him that a woman was found killed in some of the Prophet's battles, whereupon the Prophet, peace and blessings of God be upon him, condemned the killing of women and young children. " (alsunan al.... 9/17)

The companions of the Prophet, peace and blessings of God be upon him, and their followers and those who came after them had fulfilled the Prophet's will in their wars with their enemies fending off assaults by the enemy, persecution of Muslims because of their belief, and confronting Islamic Dawah by harming those who embraced Islam to drive them away from it, which was a blatant violation of the freedom of belief and among the most sacred of natural human rights bestowed to them by the Creator of man and protected by all man-made constitutions, human rights declarations and UN conventions.

The following are some historical facts narrated to us by the books of *Seerah* (History of the Prophet Muhammad) and battles:

2 - Advice of Abu Bakr as-Siddiq

The author of *al-Siyar al-Kabir* (182/3) related that Abu Bakr as-Siddiq said to Yazid ibn Abu Sufyan, his army commander that he sent to the Levant: "You will find people who claim that they have devoted themselves to God. Disperse them so long as they claim that they devote themselves to Him,... And I advise you of ten things: Do not kill women, boys, and the very old; do not cut down fruit-bearing trees; do not give orders; do not slaughter sheep or camels except to eat them; do not burn date palms or submerge them; do not shackle and do not be cowardly".

In another account, Abu Bakr says to his commanders Yazid ibn Abu Sufyan, 'Amr ibn al-'As and Shurahbil ibn Hasana: "Do not submerge date palms and do not burn them and do not slaughter cattle or fruit-bearing trees, do not destroy places of worship, do not kill parents, the elderly or women, and you will find people who have cloistered themselves in monasteries. Call on them so long as they devote themselves to Him."

It is apparent from this advice that the basis for contact between Muslims and their enemies in times of war is to push back against aggressors which is permitted as an exception when

necessary, in contrast to the rule of contact between Muslims and others, which is based on safety, peace and cooperation to protect human rights and prevent aggression, and banishing weapons of mass destruction of human beings and assets, like drowning, burning, destruction, sabotage and destroying wealth. Therefore, the following acts are rejected, because the necessity of war does not require them, and there is no confirmed association with the justification of war, or in the language of law, it is not among the reasons for permissibility or the prevention of responsibility:

1. Directing belligerent acts against noncombatants, in other words, those unable or unqualified to wage war, or, in the language of international law, civilians, such as women, boys, the elderly, the disabled and the insane, as was previously stated.
2. Directing belligerent acts against men of religion who claim that they have made themselves vessels of obedience to God. These men do not fight even if present on the battlefield and have not participated, as men of religion who work in a moral guidance division within fighting forces. This is apparent, and anyhow, other civilians who do not fight do not direct belligerent acts towards them. They are different from military consultants who guide the battles, design plans and lay down strategies, even if they do not wage the battle themselves.
3. Destruction of property without being necessary for war, such as cutting down fruit-bearing trees, demolishing palaces in cities, destroying cultural buildings and bombing civilian targets that the enemy does not use for combat purposes. The aim of jihad is not revenge and devastation, but to defend against aggression and protect basic human rights, the most important of which is the right to piety and the freedom to practice the rituals of one's belief which one chooses purely according to one's wishes, and to support the oppressed and defend the persecuted even if they are not Muslim, in accordance with the principles of Hilf al-Fudul [an alliance of clans, also called League of the Virtuous] in which the Messenger, peace be upon him, participated before the Bi'tha [the beginning of his prophethood], and he expressed his readiness to participate in it after the Bi'tha. The goal of this alliance was to defend the oppressed and fight against oppression and return the rights to their owners.
4. Destruction of agricultural wealth, such as cutting down trees, plantings and date palms, and burning them and destroying them with weapons of mass destruction that wipe out crops and breeding. This is corruption in the text of the Holy Qur'an: "And when he goes away, he strives throughout the land to cause corruption therein and destroy crops and animals. And Allah does not like corruption."
5. Destruction of animal wealth, such as butchering camels and slaughtering sheep and cattle except for food that the army needs to eat. Such animal wealth includes domesticated animals, and other

animals that are not eaten for meat and are considered animal wealth. It was related by 'Amr ibn al-'As, may God be pleased with him, that the Messenger, peace be upon him, said: "He who kills a bird or anything larger for no just reason, God will ask him about the killing. It was said, 'O Messenger of God, what is a just reason? He said that you kill it and then you eat it, and do not cut off its head and throw it away". It was related on the authority of Sa'id ibn Jubayr on the authority of 'Abdullah ibn Umar that the Prophet, peace be upon him, said: "May God curse he who disfigures an animal" (As-Sunnan Al-Kubra 86/9).

The intention is to prohibit all aspects of destruction, devastation and demolition that the necessity of war does not justify. The rules of contact between Muslims and others in times of war are for defense, in other words pushing back against aggression, real or expected or that which is about to occur, according to course of traditions and the history of enemy behavior with Muslims.

6. Destruction of places of worship, such as archeological and historical buildings, and places of treatment and educational institutions, homes for the disabled and elderly and all civilian buildings that the enemy does not use in military preparation, as well as roads, means of transportation water, gas and electricity stations, etc. that are not used in battle, as the rule protects this property, just like other non-Muslim assets by virtue of original innocence, in other words, the protection that God bestowed upon people, assets and items. However, the necessity of war to repel aggression and fight oppression has necessitated destruction for defense that could not be accomplished otherwise, including killing people and destroying assets. The rest remains under the rule of prohibition, because necessity must only be assessed proportionately, for the Lord Almighty said: "Fight in the way of Allah those who fight you, but do not transgress. Indeed, Allah does not like transgressors" and fighting in the name of God is only true if it is in accordance with His teachings and His rules and within the limits of His goals, and in light of the rules of emergency permission over the original prohibition.

7. Engaging farmers:

It came in the advice of Umar bin al-Khattab, may God be pleased with him, to his soldiers: "Farmers have in them the fear of God, so do not kill them unless they wage war against you" (As-Sunnan Al-Kubra 77/9). Farmers are a class of people who do not prepare for war and usually do not participate in it, but are involved in agricultural production. It could be presumed that they kill in order to stop production and cripple economic life, causing famine, resulting in extermination by starvation, even though this is not accepted by sharia in any case, because the necessity of war does not require a war of starvation and destruction of the enemy's infrastructure. Like the farmers there are classes of productive people and workers in all fields of economic activity like tradesmen and manufacturers who have nothing to do with war and are not present on the battlefield.

Second: Handling the Family

Sharia preceded all positive constitutions and global declarations of human rights in handling, caring for and protecting the family and not abusing its honor. God's veneration of humanity came in His description of man regardless of his religion or beliefs, color or country, and in cases of war and peace. Islam has forbidden the harsh treatment and starvation of the family and other things related to protecting human rights, some of which are below:

1. Forbearance of the enemy: Sharia prohibits using the family of the enemy as a target for training Muslim soldiers in bombardment, which is called forbearance. It was related: "that Adbulrahman ibn Khalid ibn al-Walid, the commander of the army in Roman lands, ordered forbearance in four handlings of Roman families, so they shot arrows until they killed. When he heard this, Abu Ayyub [filed a report] until Adbulrahman ibn Khalid came. He said: Did you have forbearance with them? I have heard the Messenger of God, peace be upon him, prohibiting forbearance with riding animals, and I do not like that there is for me so-and-so and that I have forbearance with a chicken. So Adbulrahman ibn Khalid called upon his two boys from four and he liberated their places (As-Sunnan Al-Kubra 9: 71). It is apparent that the action of the commander was not necessary and did not call for the such severity, which was torture of the families who are unable to fight and who would bring no harm.
2. Burning the enemy with fire: Sharia prohibits the burning of the enemy with fire, even if deserved for killing, because burning is torture beyond the need for defense, for it is revenge, and war in the name of revenge is not jihad in the name of God, but a remedy for rage using illegal means. It was related by Abu Hurairah, who said: "The Messenger of God, peace be upon him, was sent to us and he said: You found so-and-so and so-and-so, as men from Quraysh, so they burned them with fire. Then the Messenger of God, peace be upon him, said when we wanted to leave, I ordered you to burn so-and-so and so-and-so with fire, and only God tortures with fire, so if you find them, then kill them" (As-Sunnan Al-Kubra 9/71, Sahih al-Bukhari 7, 75).

Third: Economic and Trade Relations with the Enemy in Times of War:

Aiding the enemy in times of famine:

Sharia does not prohibit assisting the enemy and giving a helping hand to them in times of hardship, poverty, catastrophe and lethal famines, if there is no apparent harm to Muslims in providing this aid. Muhammad ibn al-Hasan says: "The priority for the Muslim is to take care not to have reasons for [the use of] force, unless it is alright for that regarding food and clothing and so

forth". It was also related that Thumamah ibn Uthal embraced Islam in the time of the Prophet, peace be upon him, and he cut off supplies, that is, food from the people of Mecca. So they wrote to the Messenger, peace be upon him, asking him to give him permission to carry the food to them, so he permitted this. The people of Mecca at that time were at war with the Messenger, peace be upon him, so we learned that he was alright with that. This is because Muslims need some medicine and personal belongings in their homes. If we keep from them what is in our homes, then they will ban what is in their homes (Sharh al-Kabir 3:177).

Fourth: The Necessity of Fighting

We mentioned that sharia requires that belligerent acts not be directed at noncombatants, and that all manners of mutilation and burning of enemy soldiers is not permitted under the normal circumstances of war, and that economic war by destroying property and animal wealth is not allowed. However, this rule like the rest of the sharia rules is subject to the rule of "necessity permits the forbidden", so these are forbidden acts under normal circumstances of war, but under abnormal circumstances, these acts may be permitted and the prohibition is restricted to the situation where there is a choice. Based on this, Muslim legal scholars decided to permit some of these behaviors if the necessity of war and fighting requires them such that not resorting to those forbidden acts and behaviors would keep Muslims from realizing victory and avoiding defeat (see Bada'i al-Sana'i 7:100, Al-Muhalla 7:297, Mughni al-Muhtaj 4:223, Al-Mughni 8:450 referred to in the book Peace and War by Dr. Mahmoud Tantawi).



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TRANSLATOR STATEMENT

I hereby declare that, to the best of my knowledge and belief, the translation of the above referenced documents is a true, accurate and complete translation of the original.

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